(A)

C.S.607

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

S.A. No. 377 /2004.

APPELLANT DEFENDANT : Dasharath S/o Ramnath Sahu, aged 55 years, occupation - Agriculture, R/o village Khairbana kala, Patwari Halka No.32, Tahsil Kawardha, Distt. Rajnandgaon, at present District Kabirdham (C.G.).

Versus

RESPONDENTS PLAINTIFFS : 1. Ramchandra, aged 75 years S/o Dindayal Sahu.

2. Ramnath Sahu S/o Dindayal Sahu, aged 78 years.

3. Anand Ram S/o Ramlal Sahu, age 55 yrs.

4. Anandiya Bai W/o Jagelal Sahu, aged 50 years.

All occupation - Agriculture, R/o village Khairbanakala, P.H.No.32, R.I.Circle & Tahsil Kawardha, Distt. Rajnandgaon at present Distt. Kabirdham.

5. Anandi S/o Ramlal Sahu, aged 48 yrs. occupation-Agriculture, R/o village Lalpur Kala, P.H.No.33, R.I.Circle & Tahsil Kawardha, Distt. Rajnandgaon at present Distt. Kabirdham (C.G.)

6. Bhadu S/o Ramlal Sahu, aged 40 years occupation - agriculture, R/o village Khairbana kala, P.H.No.32, R.I.Circle & Tahsil Kawardha, DistT.Rajnandgaon at present Kabirdham (C.G.).

P. R. No. 1629/04
Presented by Shri J.P. Sharma
dated 7-7-04

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7-7-04
Clerk to A. G. Bilaspur

.....contd....

7. Budh Kunwar Bai W/o Nand Singh Sahu, aged 38 years, occupation - Agriculture R/o village Jebadan, P.H.No.33, R.I. Circle & Tahsil Kawardha, District Rajnandgaon, at present Kabirdham(CG)
8. Bihari S/o Ramlal Sahu, aged 36 years occupation - Agriculture, R/o village Khairbana kala, P.H.No.32, R.I.Circle, & Tahsil Kawardha, Distt.Rajnandgaon at present Distt. Kabirdham (C.G.)
9. State of Chhattisgarh
   Through : Collector, Rajnandgaon
   at present through Collector, Kabirdham (C.G.)

SECOND APPEAL UNDER SECTION 100 OF C.P.C.

(22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 377/2004

APPELLANT/DEFENDANT : Dashrath

Versus

RESPONDENTS/PLAINTIFFS : Ramchandra & others.

Post for judgment on 27-10-2006

Sd/-
Dhirendra Mishra
Judge

(23)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 377/2004

APPELLANT/DEFENDANT : Dashrath

Versus

RESPONDENTS/PLAINTIFFS : Ramchandra & others.

Shri H.V. Sharma counsel for the appellant.

JUDGMENT

(17-10-2006)

The appellant/defendant No.1 has preferred this appeal under section 100 of the Code of Civil Procedure against the judgment and decree dated 19.4.2004 passed by learned Additional District Judge (FTC) Kawardha in Civil Appeal No. 69-A/2002 whereby the appeal preferred by him against the judgment and decree dated 23.11.1996 passed by Civil Judge Class I Kawardha in Civil Suit No. 14-A/1994 has been dismissed and the decree in favour of the plaintiff has been confirmed.

2. The plaintiff field a civil suit for declaration and perpetual injunction against the defendants with the averment that the parties to the suit are descendants of Sumeri. Sumeri owned lands in villages Khairbana and Taro. There was partition between the sons of Sumeri some 46-47 years back. In the above partition Sumeri was allotted a share who resided with Deendayal. It was agreed that share allotted to Sumeri would be inherited by Deendayal. All parties came into possession over the suit land as per the oral partition. However, the

lands continued to be recorded jointly in the revenue records. Sumeri died in the year 1956. After the death of Sumeri lands falling in her share were allotted to Deendayal. Deendayal had three sons namely Ramlal, Ramnath and Ramchand, the plaintiff. As per partition in the family 7.46 acres of land situated in village Taro fell in the share of Ramlal, Ramnath, the father of defendant No.1 and the plaintiff. Partition took place between the successors of Deendayal. However, Muknibai, the wife of Deendayal did not claim her share over the suit land. After partition the defendants 1 and 3 sold Khasra No. 198 area 1.77 acres and thus only 7.69 acres of land remained in joint holding and as per partition 2.77 acres of land was allotted to Ramlal, the father of defendant No.3, Ramnath – father of defendant No. 1 obtained 2.07 acres of land whereas the plaintiff was allotted 2.83 acres of land and since then the parties are in possession of their respective shares as described in Schedule – C and map appended to the plaint. The sale deed dated 26.6.1964 was executed by the members of the joint family including the father of defendant No.3 Ramlal in favour of defendant No.3 and defendant No.1 who was minor at that time, with respect to the land admeasuring 9.64 acres including Khasra No. 198 area 1.77 acres (Ex. P-14). On the same date the agreement of Ex P-13 was signed by Ramlal, Ramnath, Ramchandfra and Mukni Bai whereby they did not have any share over the remaining land of village Taro and stated that the other share holders may partition the same amongst themselves and as per the agreement of Ex. P-13 the names of the successors of deceased Deendayal were deleted from the revenue papers with respect to 17.59 acres of land of village Taro vide order dated 31.8.1977. In the order of the Tehsildar it was mentioned that since the share of Deendayal has been separated by a nominal sale deed of Ex. P-14 in favour of defendants 1 and 3, the names of successors of Deendayal from rest of the holding are deleted. It was further pleaded by the plaintiff that the land recorded in the names of defendants 1 and 3 described in Schedule – C has

already been partitioned between the plaintiff and the defendants. However, the plaintiff initiated the proceedings for separation of his share in the revenue records before the Tehsildar which was opposed by the defendant No.1, whereupon the concerned Tehsildar vide order dated 20.11.1992 directed the parties to file a civil suit for partition and in these circumstances the above suit was filed. Defendant No.1 in his written statement denied the averments made in the plaint and stated that the plaintiff does not have any right or interest over the suit land admeasuring 7.69 acres as he had purchased the same vide registered sale deed dated 26.6.1964 and after purchasing the same partition has already been effected between the defendants 1 and 3 some 20 years back and since then they are in their separate possession of their respective shares. The suit filed by the plaintiff is barred by limitation. It is also barred by Benami Transaction Prohibition Act, 1988. The plaintiff is estopped from challenging the sale deed. However, the defendants 3 and 4 in their written statements accepted the claim of the plaintiffs.

3. On the basis of the pleadings of the respective parties the issues were framed and after recording the evidence of the respective parties, the trial Court decreed the suit by recording a finding that the sale deed dated 26.6.1964 was executed without consideration in favour of the defendants 1 and 3 with a sole purpose of separation of names of successors of Deendayal in the revenue records and the plaintiff is in possession over the disputed land as described in Schedule – C and the map appended to the plaint. The plaintiff is also in possession of 1/3rd portion of Khasra No. 35/4 area 1.65 acres. The suit is within limitation and it is not barred by Benami Transaction Prohibition Act 1988 and accordingly the suit was decreed. The appeal preferred by the appellant has also been dismissed with identical findings.

4. The instant second appeal has been preferred by the appellant on the following substantial questions of law:

(i) Whether the learned 1st appellate Court erred in upholding the decree of declaration of suit without seeking relief for cancellation of the sale deed or without the declaration as the sale deed was not binding?

(ii) Whether both the learned courts below wrongly held that even being a party to the sale deed, the plaintiff/respondent No.1 is not estopped from challenging the deed?

(iii) Whether both the learned courts below wrongly held that the suit was not barred by limitation?

5. Learned counsel for the appellant submits that in view of the sale deed of Ex. P-14 effected by the family members in favour of defendants 1 and 3 with respect to the suit property, it was not open for the plaintiff to claim decree of declaration and perpetual injunction without a prayer for cancellation of the sale deed of Ex P-14.

6. Both the courts below after analyzing the documents available on record and the statements of the respective parties have recorded a concurrent finding of fact that a conjoint reading of document of Ex.P-14 and the agreement Ex P-13 it would be clear that the above documents were executed with the purpose of separation of names of successors of Deendayal from the revenue records and the same was a nominal sale deed without consideration.

7. In view of the above concurrent findings of fact recorded by both the Courts below this Court is of the view that it was not necessary for the plaintiff to pray for cancellation of the sale deed as the sale deed in question was never to be

acted upon and the same was executed with the limited purpose of correction in the revenue papers as per the oral partition.

8. So far as the second substantial question of law proposed by the appellant is concerned, both the Courts below have recorded a concurrent finding of fact that document of Ex/ P-14 was a nominal sale deed without any consideration and the same was *non est*. A finding has also been recorded that as per the oral partition effected between the successors of Deendayal, the plaintiff is in possession over the suit land described in schedule C and therefore, the question of plaintiff being estopped from challenging the sale deed of Ex P-14 does not arise.

9. So far as the 3rd substantial question of law proposed by the appellant is concerned, the cause of action arose to the plaintiff only when he applied for separation of his name in the revenue record which was opposed by defendant No. 1 and accordingly the concerned Tehsildar directed the plaintiff to get his claim adjudicated from the civil court and as such cause of action to the plaintiff arose in the year 1992 when his claim over the suit land was disputed by the defendant No.1 and in the aforesaid circumstances both the courts below have rightly held the suit to be within limitation.

10. In the result no substantial question of law as proposed by the appellant is involved in this appeal for adjudication. Thus the appeal being devoid of merit is liable to be dismissed and the same is accordingly dismissed at the admission stage itself.

Sd/-
DHIRENDRA MISHRA
Judge